

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No.19/RP/2020

in

Petition No.284/RC/2019

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S. Jha, Member

Date of order: 6th December, 2021

In the matter of

Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for review of the order dated 30.12.2019 in Petition No. 284/RC/2019.

And

In the matter of

NTPC Limited,
Core-7, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi – 110003

... **Review Petitioner**

Vs

1. Tamil Nadu Generation and Distribution Corporation Limited,
144, Anna Salai,
Chennai – 600 002

2. Power Company of Karnataka Limited,
5th Floor, KPTCL Building,
Kaveri Bhawan, K. G. Road,
Bengaluru – 560 009

3. Kerala State Electricity Board,
Vydyuthi Bhawan, Pattom,
Thiruvananthapuram – 695 004

4. Puducherry Electricity Department,
Beach Road,
Puducherry – 605 001

5. Transmission Corporation of Andhra Pradesh,
Vidhyuthi Soudha,
Hyderabad – 500 082



6. Transmission Corporation of Telengana,
Vidhyuthi Soudha,
Hyderabad – 500 082

... Respondents

Parties present:

Shri Venkatesh, Advocate, NTPC
Shri Ashutosh Kumar Srivastava, Advocate, NTPC
Shri Mehak Verma, Advocate, NTPC
Shri Vinay Kumar Garg, NTPC
Shri Harshit Sharma, NTPC
Shri S. Vallinayagam, Advocate, TANGEDCO
Dr. R. Kathiravan, TANGEDCO
Ms. R.Ramalakshmi, TANGEDCO
Shri R.Srinivasan, TANGEDCO

ORDER

Petition No. 284/RC/2019 was filed by Tamil Nadu Generation and Distribution Corporation Limited (in short 'TANGEDCO') seeking regulatory compliance with regard to sharing of efficiency gains between the generating stations of NTPC and its beneficiaries, in the monthly energy bills of the generating stations and the Commission vide its order dated 30.12.2019 ('the impugned order') disposed of the same as under:

"13. It is clear from the above stipulation that, the losses, in case the Generating companies which are not able to maintain normative parameters, are not to be shared with the beneficiaries. The losses would imply that the generating stations have not put in adequate efforts to sustain the normative performance parameters. The Regulation clearly stipulates that only gains on account of better performance of the stations are to be shared on monthly basis and the losses are to be borne by the generating companies themselves.

14. The method of averaging as adopted by NTPC is not in line with SOR and Regulation 8(6) of 2014 Tariff Regulations as averaging takes into account the gains as well as losses which are not shared. Accordingly, NTPC is liable to calculate the net gain based on actual controllable parameters for the month and share the gain on monthly basis.

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17. Accordingly, the Respondent, NTPC is directed to furnish the details of month-wise Actual controllable operational parameters for SHR, Auxiliary Consumption and Secondary Fuel Oil Consumption for all the generating stations to the Petitioner for the period 2014-19. NTPC shall recalculate the gains for the entire tariff period 2014-19, and share the gains as per Regulation 8(6) of 2014 Tariff Regulations on monthly basis within a period of 2 months from the date of this order'



2. Aggrieved thereby, NTPC Limited ('the Review Petitioner') has filed the present petition for review of impugned order dated 30.12.2019 in Petition No. 284/RC/2019 based on the following submissions:

Submissions of the Review Petitioner NTPC

3. The Review Petitioner has mainly submitted the following:

(i) The Commission in paragraph 14 of the impugned order has held that operational parameters such as Gross Station Heat Rate (GSHR), Auxiliary Power Consumption (APC) and Secondary Fuel Oil (SFO) ought to be computed on a monthly basis. This finding of the Commission is contrary to Regulation 8(6) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (in short 'the 2014 Tariff Regulations'). The norms such as GSHR, APC and SFO are fixed based on annual performance of the stations where the seasonal variations in operating conditions and coal and effect of unit overhauling is averaged out. The monthly data of these operational norms have never been considered by the Commission, while framing the said regulations.

(ii) If Regulation 8(6) of the 2014 Tariff Regulations is to be interpreted monthly, then the generating stations are expected to operate on monthly basis and significant variation would be seen between monthly parameters *vis-a-vis* the annual parameters in so far as GSHR, APC and SFO is concerned. Therefore, as per the overall scheme of the 2014 Tariff Regulations and the 2019 Tariff Regulations, achieving the norms on monthly basis was never envisaged.

(iii) Though Regulation 8(3) of the Draft 2014 Tariff Regulations originally proposed for sharing of financial gains on account of controllable parameters, on monthly basis, the Commission, after consideration of the views of all stakeholders, provided for sharing of gains with a provision for annual reconciliation in the 2014 Tariff Regulations. The same was done with a specific intent to ensure that GSHR, APC and SFO are reconciled on 'annual basis'. This position has been clarified in Paragraph 10.14 of the Statement of Objects and Reasons (SOR) to the 2014 Tariff Regulations and Regulation 8(6) of the 2014 Tariff Regulations notified by the Commission.



(iv) If the impugned order is to be implemented, then the words 'with annual reconciliation' would become redundant, which cannot be the intention of the regulations specified by the Commission. The Hon'ble Supreme Court in the case of Sankar Ram & Co v Kasi Naicker (2003) 11 SCC 699 held that no words used in the statute can be ignored. Once the Commission, after considering the objections from all stakeholders, has consciously added the phrase 'annual reconciliation' in Regulation 8(6) of the 2014 Tariff Regulations, then the same cannot be ignored while passing the impugned order in so far as the computation of GSHR, APC and SFO.

(v) In addition, the NAPAF for the purpose of recovery of fixed charges is also considered on annual basis (low/high demand months) so that the generator could carry out unit overhauling and any other work that requires shut down of units. Loss of station availability during such activities is recovered by the generator on annual basis through proper planning. Therefore, since annual parameters are set out for the generators in the tariff regulations, computation of GSHR, APC and SFO ought to be done on annual basis to make it parallel with operating parameters of the generating company.

(vi) The issue on seasonal variation has been accepted by the Commission previously which is evident from the SOR and hence, the impugned order in so far as it directs the Review Petitioner to compute GSHR, APC and SFO on a monthly basis is an error apparent on the face of record. The Commission has also not considered that unit performance is best after overhauling, after which it gradually deteriorates with time till the next overhauling. APC and SFO increases for the month during overhaul due to various re-commissioning activities of the unit and during low demand periods. Hence, annual reconciliation of GSHR, APC and SFO is required to average out the impact of overhauling.

(vii) If the generator cannot claim compensation for loss of operating parameters every month depending on the actual achieved parameters, then the natural sequitur to the said proposition will have to be that the generator is not compelled to compute GSHR, APO and SFO on a monthly basis. These



facts have escaped the attention of the Commission while passing the impugned order and, thus, there is error apparent on the face of the impugned order.

(viii) All the reasons elaborated in the petition justifying the computation of actual SHR, actual APC and actual SFO, on cumulative basis upto the month are valid for the 2019-24 tariff period. The above grounds and principles apply to sharing of gains on annual basis for the 2019-24 tariff period.

Reply of Respondent No.1 TANGEDCO

4. The Respondent No.1 TANGEDCO vide reply affidavit dated 27.8.2020 has submitted the following:

(a) There is no ambiguity or dispute that only the benefits are to be shared on monthly basis in terms of Regulation 8(6) of the 2014 Tariff Regulations and, hence, the Commission has rightly directed to share the benefits of gain on monthly basis, subject to annual reconciliation.

(b) As per paragraph 10.12 and 10.13 of the SOR to the 2014 Tariff Regulations, the losses on account of generating companies not maintaining normative parameters are not to be shared with the beneficiaries and the generating stations shall work out the gains on account of variation in norms, on monthly basis.

(c) The Review Petitioner has challenged the regulation in the guise of review. The Commission has considered all the above factors as evident from the SOR to the 2014 Tariff Regulations and, hence, the submission of the Review Petitioner is devoid of merits. The Review Petitioner has not produced any new and important matter or evidence which was not within the knowledge and that there is no mistake on the face of record and, therefore, the contention of the Review Petitioner is devoid of merits.

Hearing on 20.7.2021

5. The Review Petition was heard on admission, through video conferencing on 20.7.2021. The Commission, after hearing the learned counsel for the Review



Petitioner, condoned the delay in filing the Review Petition, in IA No. 43/2020, and admitted the Review Petition. The parties were directed to complete pleadings in the matter.

6. In compliance to the direction of the Commission, the Respondent No.1 TANGEDCO vide affidavit dated 9.8.2021 has filed its reply on merits and the Review Petitioner has filed its rejoinder to the said reply vide affidavit dated 17.8.2021.

Hearing on 26.11.2021

7. During the hearing of the Review Petition through video conferencing on 26.11.2021, the Commission, after hearing the learned counsels appearing for the Review Petitioner and the Respondent No.1 at length, reserved its order in the matter.

Analysis and Decision

8. Based on the submissions of the parties and the documents available on record, we examine the prayer of the Review Petitioner in the subsequent paragraphs.

9. The Review Petitioner has submitted that Regulation 8(6) of the 2014 Tariff Regulations read with SOR to the said regulations, provides that the gains of a generating company on account of controllable parameters like GSHR, APO and SFO are to be shared between the generating company and the beneficiaries, on monthly basis, with annual reconciliation. The Review Petitioner has further submitted that though the draft Regulation 8(3) of the draft 2014 Tariff Regulations originally proposed for sharing of the financial gains on account of the said controllable parameters, on monthly basis, the Commission, after considering the



views of all stakeholders, provided for the sharing of gains of the said controllable parameters, on monthly basis, with annual reconciliation. Accordingly, the Review Petitioner has submitted that if the impugned order dated 30.12.2019 is implemented, the words 'with annual reconciliation' will become redundant. The Respondent No.1 has also admitted that as per Regulation 8(6) of the 2014 Tariff Regulations, the benefits of gain in respect of the aforesaid controllable parameters of the generating station are required to be shared by the Review Petitioner, on monthly basis, with annual reconciliation.

10. Thus, the issue for consideration, as per submissions of the Review Petitioner above, is whether the non-inclusion of the phrase 'with annual reconciliation', in the impugned order dated 30.12.2019, is an error apparent on the face of the record.

11. Regulation 8(6) of the 2014 Tariff Regulations provides for sharing of gains in respect of controllable parameters, on monthly basis, with provision for 'annual reconciliation'. Regulation 8(6) is extracted below:

"8 Truing up:

Xxxx

(6) The financial gains by a generating company or the transmission licensee, as the case may be on account of controllable parameters shall be shared between generating company/transmission licensee and the beneficiaries on monthly basis with annual reconciliation"

Xxxx"

12. Also, Paragraph 10.14 of the SOR to the 2014 Tariff Regulations had clarified the reasons for inclusion of the provision for 'annual reconciliation', with regard to sharing of gains by a generating company with the beneficiaries, as under:

"10.14 The Commission agrees with the views of some of the stakeholders that the monthly figures would vary widely depending upon the seasonal changes, maintenance schedule of the Units and the load that is maintained depending on the prevailing conditions. Therefore, the Commission has decided to include the provision of annual reconciliation with respect to sharing of gains. As regards considering the variation in heat rate due to backing down and part loading, frequent start/stop, etc., the Commission as discussed in subsequent sections has provided some margin while



specifying the norms of operation and the same along with annual reconciliation will take care of these aspects.”

13. It is, therefore, clear that Regulation 8(6) of the 2014 Tariff Regulations provides for sharing of gains by a generating company, on account of controllable parameters, with the beneficiaries, on monthly basis, with annual reconciliation.

14. It is, however, noticed that in paragraph 14 and paragraph 17 of the impugned order dated 30.12.2019, no such provision for ‘annual reconciliation’ had been included, through references were made to Regulation 8(6) of the 2014 Tariff Regulations in these paragraphs. The relevant paragraphs are extracted below:

“14. The method of averaging as adopted by NTPC is not in line with SOR and Regulation 8(6) of 2014 Tariff Regulations as averaging takes into account the gains as well as losses which are not shared. Accordingly, NTPC is liable to calculate the net gain based on actual controllable parameters for the month and share the gain on monthly basis.

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17. Accordingly, the Respondent, NTPC is directed to furnish the details of month-wise Actual controllable operational parameters for SHR, Auxiliary Consumption and Secondary Fuel Oil Consumption for all the generating stations to the Petitioner for the period 2014-19. NTPC shall recalculate the gains for the entire tariff period 2014-19, and share the gains as per Regulation 8(6) of 2014 Tariff Regulations on monthly basis within a period of 2 months from the date of this order’

15. According to us, the non-inclusion of the phrase ‘with annual reconciliation’ in the said paragraphs of the impugned order dated 30.12.2019 is an error apparent on the face of the order and review on this ground is maintainable.

16. In view of our observation made in paragraph 15, the prayer of the Review Petitioner is allowed and paragraph 14 and paragraph 17 of the impugned order dated 30.12.2019 in Petition No. 284/RC/2019 shall stand modified as under:

“14. The method of averaging as adopted by NTPC is not in line with SOR and Regulation 8(6) of 2014 Tariff Regulations as averaging takes into account the gains as well as losses which are not shared. Accordingly, NTPC is liable to calculate the net gain based on actual controllable parameters for the month and share the gain on monthly basis, with annual reconciliation, as per Regulation 8(6) of 2014 Tariff Regulations.



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17. Accordingly, the Respondent, NTPC is directed to furnish the details of month-wise Actual controllable operational parameters for SHR, Auxiliary Consumption and Secondary Fuel Oil Consumption for all the generating stations to the Petitioner for the period 2014-19. NTPC shall recalculate the gains for the entire tariff period 2014-19, and share the gains as per Regulation 8(6) of 2014 Tariff Regulations, within a period of 2 months from the date of this order.”

17. Review Petition No. 19/RP/2020 in Petition No. 284/RC/2019 is disposed of in terms of the above.

Sd/-
(I.S Jha)
Member

Sd/-
(P.K Pujari)
Chairperson

